



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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April 6, 2006

Ms. Elizabeth Burmaster  
Superintendent  
Department of Public Instruction  
125 South Webster Street  
Madison, WI 53702

Dear Ms. Burmaster:

Deputy Superintendent Anthony S. Evers has requested a legal opinion concerning essentially the following question: In a county with a population of under 500,000 that has a county executive, do the library board and the library director as opposed to the county board and the county executive in a county with a consolidated county library operating under section 43.57 of the Wisconsin Statutes possess the authority to perform the following functions: hire and fire library staff; determine the compensation and duties of library staff; hire the library director; determine the compensation of the library director; conduct or participate in the negotiation of labor agreements with library staff; make budget transfers within the library budget; carry forward unexpended funds; and close library branches? Since Mr. Evers specified that his request was made pursuant to section 165.015(1), I construe the request as having been authorized by you.

In my opinion, the library board and the library director rather than the county board and the county executive possess the statutory authority to perform each of the listed functions.

Deputy Superintendent Evers also asks the following broad question: "Is it legally permissible for a public library board to delegate its legal authority under s. 43.58 Wis. Stats. to another organization or official, and, if so, under what circumstances would this be permissible?"

I interpret this question to be limited to organizations or officials that are not part of the library board and are not library staff, since the question apparently was prompted by the fact that some library boards have chosen not to negotiate labor agreements. The question itself, however, is not limited to the function of negotiating labor agreements.

In my opinion, the library board has the authority to enter into contracts with outside entities for the performance of services that it deems necessary in order to perform its statutory functions and the library board may also by resolution delegate powers of a ministerial, administrative or executive nature involving the exercise of some discretion to the county board or to county officials, provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

#### PRINCIPAL STATUTES INVOLVED

##### 1. Statutory Powers of Library Board and Library Director.

Section 43.001 provides:

Legislative findings and declaration of policy. (1) The legislature recognizes:

(a) The importance of free access to knowledge, information and diversity of ideas by all residents of this state;

(b) The critical role played by public, school, special and academic libraries in providing that access;

(c) The major educational, cultural and economic asset that is represented in the collective knowledge and information resources of the state's libraries;

(d) The importance of public libraries to the democratic process; and

(e) That the most effective use of library resources in this state can occur only through interlibrary cooperation among all types of libraries and the effective use of technology.

(2) The legislature declares that it is the policy of this state to provide laws for the development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries.

Section 43.17 provides in part:

Public library systems; general provisions. . . .

....

(4) SYSTEM ADMINISTRATION. Notwithstanding ss. 59.17(2)(br) and 59.18(2)(b), responsibility for administration of a public library system shall vest in a head librarian who shall be appointed by and directly responsible to the public library system board.

Section 43.57(4)(d) provides that the library board in a county with a consolidated county library operating under section 43.57 "ha[s] the powers and duties of a library board under s. 43.58."

Section 43.58 provides in part:

(1) The library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund, and of the purchase of a site and the erection of the library building whenever authorized. The library board also shall have exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes.

(2) The library board shall audit and approve all vouchers for the expenditures of the public library and forward the vouchers or schedules covering the same, setting forth the names of claimants, the amounts of each claim and the purpose for which expended, to the appropriate municipal or county financial officer or, in the case of a school district, the school district clerk, with a statement thereon, signed by the library board secretary or other designee of the library board, that the expenditure has been incurred and that the library board has audited and approved the bill. The municipal, county or school district governing body shall then pay the bill as others are paid.

....

(4) Notwithstanding ss. 59.17(2)(br) and 59.18(2)(b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

2. Statutory Powers of County Board and County Executive.

Section 59.17 provides in part:

(2) DUTIES AND POWERS. The county executive shall be the chief executive officer of the county. The county executive shall take care that every county ordinance and state or federal law is observed, enforced and administered within his or her county if the ordinance or law is subject to enforcement by the county executive or any person supervised by the county executive. The duties and powers of the county executive shall be, without limitation because of enumeration, to:

....

(br) In any county with a population of less than 500,000, appoint and supervise the heads of all county departments except those elected by the people and except where the statutes provide that the appointment shall be made by other elected officers. Notwithstanding any statutory provision that a board or commission or the county board or county board chairperson appoint a department head, except s. 17.21, the county executive shall appoint and supervise the department head. Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or commission shall perform any advisory or policy-making function authorized by statute.

Section 59.22(2) provides in part:

(c)1. Except as provided in subd. 2. and par. (d), the [county] board may do any of the following:

a. Provide, fix or change the salary or compensation of any office, board, commission, committee, position, employee or deputies to elective officers that is subject to sub. (1) without regard to the tenure of the incumbent.

b. Establish the number of employees in any department or office including deputies to elective officers.

c. Establish regulations of employment for any person paid from the county treasury.

....

(d) The board or **any board**, commission, committee or agency to which the board or **statutes has delegated the authority to manage and control any institution or department of the county government may contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years.**

#### ANALYSIS

##### 1. Question One: Statutory Authority To Perform Various Functions.

In 76 Op. Att'y Gen. 203, 204-05 (1987), the legislative declarations contained in section 43.001 were construed to mean that even the operation of local municipal libraries involves a matter of statewide concern:

The legislative findings and declaration of policy are tantamount to a statement that libraries, including local municipal libraries, are a matter of statewide concern because they are critical to the educational and the democratic processes.

This legislative statement and the provisions of chapter 43 reflect the fact that libraries have evolved from being a matter of local to being a matter of statewide concern. . . .

The Legislature in section 43.001 recognizes that each library cannot offer all the available services and publications that serve the educational and democratic processes. As a result, the Legislature declared that it is the state's policy to provide laws for the development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries. Sec. 43.001(2), Stats. . . . The area from which a citizen can obtain library services and assistance has expanded beyond the local municipality to the limits of the interlibrary network, which can be statewide. *See* sec. 43.17(6), Stats. Under these circumstances, the operation and maintenance of public libraries, including municipal libraries, affects all the people of the state and they are a matter of statewide concern because of the extent to which libraries and municipalities rely on one another to furnish library services.

(Footnote omitted.)



In 81 Op. Att’y Gen. 145 (1994), my predecessor concluded that a county could not transfer personnel authority over the social services director from the social services board to the personnel committee of the county board even in the absence of statutory language like that in section 43.001 that has been construed to mean that the operation of library systems is a matter of statewide concern. Furthermore, even prior to the enactment of section 43.001, 70 Op. Att’y Gen. 54, 58 (1981) specifically concluded that section 43.17 involves a matter of statewide concern.

As was the case in 81 Op. Att’y Gen. at 154, the organizational statutes at issue here involve the execution of a state function performed under extensive state supervision. In 81 Op. Att’y Gen. at 154, my predecessor also emphasized that the “detail and complexity of the statutes relating to the organization of social services and human services boards and departments are indicative of legislative intent to prescribe the precise organizational structure of the chain of command between the Department and county agencies.” These same considerations also obtain here.

Consolidated and federated library systems perform a state function. Sec. 43.001, Wis. Stats. That function is performed under extensive state supervision on the part of the Wisconsin Department of Public Instruction (“DPI”). See secs. 43.03, 43.05 and 43.24, Wis. Stats. The precise organizational structure for performing that state function has been prescribed by the Legislature. See, e.g., secs. 43.17, 43.19, 43.21 and 43.58, Wis. Stats. In my opinion, the components of that organizational structure that are specified in those statutes therefore involve a matter of statewide concern.

The organizational structure of library systems is well-established. Under section 43.58(4), “the library board shall supervise the administration of the public library and shall appoint a librarian[.]” Under section 43.17(4), the head librarian has “responsibility for administration of . . . the public library system[.]” Section 43.58(4) provides that the librarian “shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.” Sections 43.17(4) and 43.58(4) explicitly remove library boards and librarians from the purview of sections 59.17(2)(br) and 59.18(2)(b), which would otherwise authorize a county to establish a library department and permit the county executive or county administrator to appoint the head of that department. By excluding library boards from sections 59.17(2)(br) and 59.18(2)(b), the Legislature also ensured that library boards retain their administrative functions over public libraries and that such boards are not limited to the “perform[ance] [of] . . . advisory or policy-making function[s].” See sec. 59.17(2)(br), Wis. Stats.

Sections 43.17(4) and 43.58(4) explicitly address four of the functions you describe. They state that the library board hires the library director, that the head librarian appoints such other assistants and employees as the library board deems necessary, that the head librarian

prescribes the duties (including supervisory duties) of those employees and that the head librarian determines the compensation of those employees. Although these statutes do not explicitly state that the head librarian has the authority to fire library staff, section 17.10(6) provides that, in the absence of a civil service ordinance, appointive county officers may be removed at pleasure by the officer or body that appointed them. Similarly, in the absence of a civil service ordinance, of uniform regulations of employment under section 59.22(2)(c)1.c. or of contrary provisions in a labor agreement, the authority to remove appointive county employees is vested in the officer or body that appointed them. Since the library director appoints the staff of the library, the library director has the authority to fire library staff unless one of these other circumstances obtains.

In my opinion, the county board may not utilize the provisions of section 59.22(2)(c)1.a., 59.22(2)(c)1.b. or 59.22(2)(d) to hire the library director, hire the employees of the public library, determine the number of employees of the public library, determine the duties of those employees, or determine the compensation of those employees. In *Jones v. State*, 226 Wis. 2d 565, 604, 594 N.W.2d 738 (1999), the supreme court held: "It is well established that 'when we compare a general statute and a specific statute, the specific statute takes precedence.' *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 185, 532 N.W.2d 690 (1995)." The provisions in sections 43.17(4) and 43.58(4) that refer to the library board and the library director are more specific than the provisions of section 59.22(2)(c)1.a., (c)1.b. and (d) that refer to the county board and to county employees in general. Compare 65 Op. Att'y Gen. 182, 184 (1976), which determined that the more specific provisions of sections 51.42 and 51.437 authorizing 51.42 and 51.437 boards to fix the salaries and establish the compensation of employees of those boards are controlling over the more general provisions of what is now section 59.22(2) that permit the county board to establish the salaries of county employees. The result is that sections 43.17(4) and 43.58(4) "plac[e] . . . specific direct . . . control in the . . . [library] board while at the same time placing general budgetary control . . . in the county board." 65 Op. Att'y Gen. 105, 107 (1976).

The authority of the library board and the library director to conduct or participate in labor negotiations is specifically granted by section 59.22(2)(d), which vests the "board . . . to which . . . statutes has delegated the authority to manage and control any institution . . . of the county government" with the authority to "contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years." Such authority is also necessarily implied from the provisions of section 43.58(4), which authorizes the library director to determine the compensation and establish the duties of library staff under the general supervision of the library board. The library board possesses those powers that are fairly implied from those powers expressly conferred upon it by statute. See 77 Op. Att'y Gen. 193, 194 (1988). The library board cannot enter into labor contracts, determine employee compensation or establish the duties of library employees in any meaningful fashion unless it has the implied

power to conduct or participate in the negotiations that result in labor contracts involving library employees.

The authority of the library board to make budget transfers within the library budget and to carry forward unexpended funds is expressly granted under section 43.58(1), which provides that “[t]he library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund . . .” and is necessarily implied from the provisions of section 43.58(4), which grants the library board the authority to “supervise the administration of the public library[.]” In 65 Op. Att’y Gen. at 184, it was noted that the term “library fund” appears only in sections 43.52(1) and 43.58(1). 65 Op. Att’y Gen. at 184 described the “library fund” as consisting largely of “the proceeds of a tax levied and moneys appropriated . . . to be used exclusively to maintain ‘the public library.’” In 77 Op. Att’y Gen. at 194, the library board’s authority over the library fund under section 43.58(1) was described as follows:

Based on the common and generally understood meaning of the above language of section 43.58(1), it is my opinion that the legislative grant to a library board of “exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund” contemplates that the board will exercise complete control over the *manner* in which such moneys are expended . . . .

(Italics in original). 65 Op. Att’y Gen. at 184 similarly concluded that “[e]xpenditures therefrom [the library fund] can only be made by a library board.”

DPI, which exercises supervisory authority over library boards, has consistently construed 77 Op. Att’y Gen. 193 and 65 Op. Att’y Gen. 182 to mean that, once funds are appropriated to the library board, the library board is the only entity that can exert direct control over the expenditure of those funds. 77 Op. Att’y Gen. 193 and 65 Op. Att’y Gen. 182 also “ha[ve] considerable weight if the legislature later amends and revises a statute but makes no changes in response to the opinion[s].” *State ex rel. North v. Goetz*, 116 Wis. 2d 239, 244-45, 342 N.W.2d 747 (Ct. App. 1983). Furthermore, “in cases where an attorney general’s opinion[s] ha[ve] been followed by consistent administrative practices, those opinions may well become authoritative as a practical construction of a statute.” *In re Petition of Kruzell*, 67 Wis. 2d 138, 146-47, 226 N.W.2d 458 (1975).

Wisconsin Statutes Annotated §§ 41.01 to 47.01 (West 2003), at 84 indicates that section 43.58 has been amended numerous times since 77 Op. Att’y Gen. 193 and 65 Op. Att’y Gen. 182 were issued. To cite just one example, 1995 Wisconsin Act 201, secs. 54 and 55, explicitly reaffirmed that the library board and the library director are not subject to the provisions of sections 59.17(2)(br) and 59.18(2)(b). It is my opinion, based upon 77 Op. Att’y Gen. 193 and 65 Op. Att’y Gen. 182, the consistent construction of those opinions by DPI and the numerous amendments to section 43.58 since those opinions were issued, that the



library board is the only entity that has the authority to make budget transfers within the library budget and to carry forward unexpended funds, including those that have been appropriated to the library board by a local unit of government such as a county.

The authority of the library board to set the salary of the library director and to close library branches is either expressly granted or necessarily implied from the provisions of section 43.58(1), which grants the library board exclusive control over all expenditures from the library fund, together with the provisions of section 43.58(4), which grants the library board the authority to "supervise the administration of the public library.[]" The library board is the entity that exercises direct supervision over the administration of the public library. The library board cannot exercise its authority to supervise the administration of the public library under section 43.58(4) unless it can determine whether to close library branches. The library board also cannot exercise direct supervision over the administration of the public library without setting the salary of the library director who, in turn, sets the salaries of library staff. Both the function of setting the salary of the library director and the function of closing library branches also directly implicate the ability of the library board to control expenditures from the library fund under the rationale of 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182. If the library board lacked the authority to close library branches, it might be required to make unwanted expenditures from the library fund. Because of the direct control it exercises over expenditures from the library fund, the library board also may determine the extent to which expenditures from that fund should be allocated toward the salary of the library director.

In response to your first question, I therefore conclude that the library board and the library director as opposed to the county board and the county executive possess the authority to hire and fire library staff; determine the compensation and duties of library staff; hire the library director; determine the compensation of the library director; conduct or participate in the negotiation of labor agreements with library staff; make budget transfers within the library budget; carry forward unexpended funds; and close library branches.

## 2. Question Two: Performance Of Library Board/Director Functions By Other Entities.

77 Op. Att'y Gen. at 194 determined that, under the language contained in section 43.58(1), "the legislative grant to a library board of 'exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund' . . . includes the authority to contract the expenditure of such funds to procure necessary goods and services for the public library." Under the reasoning of that opinion, the library board has the authority to enter into contracts with outside entities for the performance of services that it deems necessary in order to perform its statutory functions. If the library board enters into a contract with an outside entity, the provision of services by that outside entity is governed by the express terms of the contract between the library board and the outside entity.

With respect to the delegation of certain library board or library director functions to the county board or to county officials, 74 Op. Att'y Gen. 227, 230 (1985) determined that a county board could utilize the provisions of what is now section 59.13(1) to delegate by resolution certain kinds of authority to committees of the county board:

Municipal powers of a ministerial, administrative or executive nature may be delegated to a committee, even if the delegation permits the exercise of some discretion or judgment. *See First Savings & Trust Co. v. Milwaukee County*, 158 Wis. 207, 227-28, 148 N.W. 22 (1914); *Kavanaugh v. Wausau*, 120 Wis. 611, 615-16, 98 N.W. 550 (1904); *Duluth, South Shore & Atlantic R. Co. v. Douglas County*, 103 Wis. 75, 79, 79 N.W. 34 (1889); *French v. Dunn County*, 58 Wis. 402, 406, 17 N.W. 1 (1883).

*See also* 68 Op. Att'y Gen. 133, 137 (1979): "A county board may delegate powers which are purely ministerial and executive to a committee or to an officer." *Duluth, South Shore & Atlantic R. Co. v. Douglas County*, 103 Wis. 75, 79 N.W. 34 (1899).

Unlike the fact situation discussed in 74 Op. Att'y Gen. 227, the library board does not have express statutory authority to delegate functions to the county board or county officials. However, under the rationale of 77 Op. Att'y Gen. at 194 it is my opinion that the provisions of section 43.58(1) granting the library board the authority to control expenditures from the library fund and the provisions of section 43.58(4) granting the library board the authority to supervise the administration of the public library provide the library board with the implied power to delegate by resolution powers of a ministerial, administrative or executive nature to the county board or to county officials.

74 Op. Att'y Gen. at 231 also emphasized that "[a]ny delegation of authority must be accompanied by ascertainable standards pursuant to which that authority is to be exercised. *See Smith v. Brookfield*, 272 Wis. [1] at 10, [74 N.W.2d 770 (1956)]; compare *French*, 58 Wis. at 405-06." Unlike the fact situation discussed in 74 Op. Att'y Gen. 227, your inquiry does not involve delegation to a subordinate entity such as a committee of the library board or library staff. A delegation to the county board, for example, would essentially constitute a delegation to a superior entity insofar as general budgetary control is concerned. *See* 65 Op. Att'y Gen. at 184. Despite this difference, it is my opinion that delegation of certain functions involving the exercise of some discretion or judgment to the county board or to county officials is permissible provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

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I therefore conclude that the library board may by resolution delegate powers of a ministerial, administrative or executive nature involving the exercise of some discretion to the county board or to county officials, provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

Sincerely,

A handwritten signature in cursive script that reads "F. Thomas Creeron III". The signature is written in dark ink and is positioned above the printed name.

F. Thomas Creeron III  
Assistant Attorney General

FTC:cla

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